IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2067 OF 2004

Arjun Thakurdas Nihalani .. Applicant

Versus

Gunwantbhai Hirani &

State of Maharashtra .. Respondents

Mr.V.S.Kapse with Ajit Kengale for applicant

Mr.A.S.Khandeparkar for respondent No.1

Ms.M.M.Deshmukh, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 18th October 2006.

P.C.

. This application is for leave to appeal.

2. Applicant - appellant is the original complainant in Regular Criminal Case No.3232 of 1997 which has been decided on 27th February 2004 by the learned Judicial Magistrate, F.C. acquitting the respondent accused of the charge under section 409 of I.P.C.

3. At the stage of hearing of this application itself, I have heard both sides at length and the direction that I propose to give would not prejudice both sides. It would obviate registering an appeal against the acquittal and deciding it again on the point which is being pressed by the complainant's Counsel Mr.Kapse before me.

4. All that Mr.Kapse for original complainant would urge is that when the record in the trial court was not available from July to December 2003 and when the matter was placed for filing of written arguments/oral submissions, the

learned Judge ought to have waited and given a fair chance to the complainant to place, either his written submissions or oral arguments on record. The judgement acquitting respondent accused has been delivered without any opportunity of advancing oral arguments or written submissions. This has greatly prejudiced the complainant and an order of acquittal is therefore, vitiated.

5. Mr.Khandeparkar, learned Counsel appearing for respondent accused would urge that in the absence of any case made out on merits, instead of interfering with the judgement of acquittal, this Court should neither grant leave nor any indulgence as prayed by the complainant. More so, when the complainant remained absent on several dates and fails to abide by the directions of the trial court to file written submissions or make oral arguments.

6. After this application was argued for some time, I suggested to both sides that the matter could be sent back to the trial court in the peculiar facts and circumstances of this case, with a view to afford an opportunity to the complainant to either advance oral arguments or written submissions.

7. Upon taking instructions from the complainant who is present in court, Mr.Kapse states that complainant is ready to argue the matter if the same is made time bound and would not seek any further adjournments on the date fixed by this Court for his appearance.

8. Mr.Khandeparkar states that if within a short time the judgement can be delivered, he would have no objection but matter should not be prolonged by seeking any adjournment.

9. Taking an overall view of the matter and

in the peculiar facts of this case, interest of justice would be sub-served if the order under challenge is set aside. Parties to appear before the trial court on 6th November 2006. Mr.Kapse states that on the date of appearance or on such other date as the trial court would determine, the complainant would remain present and advance oral arguments. The trial court to give an opportunity to respondent accused to deal with the same. However, the trial court to complete the entire process and deliver judgement by 30th November 2006.

10. It is clarified that this Court has not gone into the merits of the case and all contentions as are permissible in law are expressly kept open for being urged. The Judgement of acquittal is thus set aside. The criminal case is remitted back for delivering judgement after hearing oral arguments within the time stipulated above. R. and P to be sent

forthwith to trial court.

(S.C.Dharmadhikari, J)